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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Patricia Lopez et al.,

No. CV-19-04764-PHX-ROS

Plaintiff,

ORDER

V.

City of Mesa, et al.,

Defendants.

On August 23, 2024, Defendants City of Mesa and Heath Carroll (“Defendants”) filed a motion for Rule 37 Sanctions against Plaintiffs Estate of Anthony Lopez, Patricia Lopez, and Caesar Lopez (“Plaintiffs”) for allegedly failing to comply with the requirements of the Mandatory Initial Discovery Pilot (“MIDP”) program and the Federal Rules of Civil Procedure. (Doc. 109, “Mot”). Plaintiffs filed a response on September 6, 2024 (Doc. 111) and Defendants filed a reply on September 13, 2024 (Doc. 114). For what follows Defendants’ motion will be granted in part and denied in part.

I. Background

This case arises out of the shooting of Anthony Lopez (“Decedent”) by Officer Heath Carroll. Plaintiffs, who are the parents and estate of Decedent, argue the shooting of Decedent was unjustified.

On July 19, 2019, this case was selected for the MIDP program, which orders parties to the litigation to provide mandatory initial discovery before initiating further discovery. (Doc. 3). On February 26, 2020, the Court held a Rule 16 Scheduling Conference. (Doc.

1 27). At the Rule 16 Conference, the parties stated their MIDP obligations were complete
 2 and set a deadline of August 15, 2020 for fact discovery and final supplementation of MIDP
 3 responses. (Doc. 28). The completion of fact discovery and supplemented MIDP responses
 4 was later extended until October 15, 2020. (Doc. 36). Defendants' current counsel did not
 5 participate in discovery. They joined this case on July 15, 2024, and filed this motion on
 6 August 23, 2024. On September 25, 2024, the Court held a Status Conference and briefly
 7 discussed the issues in this motion. (Doc. 119).

8 Defendants argue Plaintiffs should be sanctioned because they have not complied
 9 with discovery obligations under the MIDP Program, the Federal Rules of Civil Procedure,
 10 and because of information discovered in the August 17, 2020 deposition of Patricia Lopez
 11 requires sanctions. Plaintiffs respond Defendants' motion is procedurally improper given
 12 (1) discovery in this case closed on October 15, 2020, (2) Defendants did not initiate any
 13 meet and confer efforts during the discovery period, and (3) the Court's scheduling order
 14 instructs the parties to not file written discovery motions without leave of court. (Docs. 28,
 15 54).

16 Pursuant to Rule 37(b)(2) and Rule 37(c), Defendants ask for the following
 17 sanctions:

- 18 (1) That Plaintiffs be ordered to produce all responsive material within 30 days
 and that all objections to the material's admissibility at trial be deemed waived;
- 19 (2) That the Court order a forensic examination of [D]ecedent's phone at
 Plaintiffs' expense;
- 20 (3) That the Decedent's Estate be precluded from recovering hedonic damages;
- 21 (4) That Plaintiffs be precluded from recovering wrongful death and therefore,
 that the state law claim be dismissed; and
- 22 (5) That Defendants be reimbursed their fees and costs in bringing this Motion.

23 **II. Legal Standard**

24 Federal Rule of Civil Procedure 37(b) provides various sanctions for a party's
 25 failure to obey a court's discovery order including:

- (i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
 - (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
 - (iii) striking pleadings in whole or in part;
 - (iv) staying further proceedings until the order is obeyed;
 - (v) dismissing the action or proceeding in whole or in part;
 - (vi) rendering a default judgment against the disobedient party; or
 - (vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

Fed. R. Civ. P. 37(b). “The scope of sanctions for failure to comply with a discovery order is committed to the sound discretion of the district court.” *Payne v. Exxon Corp.*, 121 F.3d 501, 510 (9th Cir. 1997). However, “Rule 37(b)(2) contains two standards—one general and one specific—that limit a district court’s discretion. First, any sanction must be ‘just’; second, the sanction must be specifically related to the ‘claim’ which was at issue in the order to provide discovery.” *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 707, 102 S. Ct. 2099.

Federal Rule of Civil Procedure 37(c)(1) provides:

(1) Failure to Disclose or Supplement. If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:

- (A) may order payment of the reasonable expenses, including attorney's fees, caused by the failure;
 - (B) may inform the jury of the party's failure; and
 - (C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)—(vi).

Fed. R. Civ. P. 37(c)(1). Rule 37(c)(1) contains an express exception under which a failure to provide timely information may be excused if the failure was “substantially justified” or “harmless.” *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001)). To guide the determination of whether substantial justification

1 and/or harmlessness exist, courts evaluate the following factors: “(1) prejudice or surprise
 2 to the party against whom the evidence is offered; (2) the ability of that party to cure the
 3 prejudice; (3) the likelihood of disruption of trial; and (4) bad faith or willfulness in not
 4 timely disclosing the evidence.” *Liberty Ins. Corp. v Brodeur.*, 41 F.4th 1185, 1191-92 (9th
 5 Cir. 2022) (internal citation omitted).

6 **III. Discussion**

7 **A. Preliminary Issues**

8 As an initial matter, Plaintiffs argue Defendants’ motion is procedurally defective
 9 given discovery closed in March 2020 and Plaintiffs served amended discovery responses
 10 in April 2020 with no objection from Defendants’ counsel at that time. Defendants respond
 11 that they promptly notified Plaintiffs of deficiencies after taking over the case on July 23,
 12 2024 to no response (Doc. 122 Ex. 1) and that neither Rule 37 nor the Scheduling Order
 13 imposes any prerequisites on moving for discovery sanctions.

14 The Court agrees with Defendants that Rule 37 contemplates no time limit for
 15 sanctions. However, the Court will consider potential sanctions in light of Defendants’
 16 failure to meet and confer in the discovery period.

17 **B. Alleged MIDP Failures**

18 Defendants allege Plaintiffs violated several MIDP program discovery obligations.
 19 During the initial stages of the MIDP program, discovery responses are called for by Court
 20 order, rather than being served by an opposing party. After the mandatory initial discovery
 21 responses have been provided, additional discovery proceeds under the Federal Rules of
 22 Civil Procedure and the Court’s Scheduling Order. However, a party’s MIDP duties are
 23 continuous, and each party must serve supplemental responses when new or additional
 24 information is discovered or revealed.

25 As relevant here, this case’s MIDP Order states, “[p]arties must provide the
 26 requested information as to facts that are relevant to the claims and defenses in this case,
 27 whether favorable or unfavorable, and regardless of whether they intend to use the
 28 information in presenting their claims or defenses.” (Doc. 3 at 4). Additionally, parties are

1 required to “[l]ist the documents, electronically stored information (“ESI”), tangible things,
 2 land, or other property known by you to exist, whether or not in your possession, custody
 3 or control, that you believe may be relevant to any party’s claims or defenses” and
 4 “[p]rovide a computation of each category of damages claimed by you, and a description
 5 of the documents or other evidentiary material on which it is based, including materials
 6 bearing on the nature and extent of the injuries suffered.” (*Id.* at 5).

7 Defendants have argued several of Plaintiffs’ disclosures violated these duties. The
 8 Court will consider each of Plaintiffs’ alleged failures in turn.

9 1. Epilepsy Records

10 Defendants argue Decedent’s epilepsy medical records were not disclosed prior to
 11 Plaintiff Patricia Lopez’s deposition in violation of Plaintiffs’ MIDP duties. Defendants
 12 contend the Decedent’s epilepsy impacts his life expectancy and anticipated quality of life
 13 and is relevant to Plaintiffs’ claimed hedonic damages. Defendants also argue this omission
 14 bears directly on the case because Plaintiffs’ police procedures expert opines a reasonable
 15 alternative to the shooting was for the officers to pursue Decedent with flashing lights that
 16 are a known trigger for seizures.

17 Plaintiffs respond they did not possess copies of Decedent’s medical records, nor
 18 did Defendants subpoena or request Plaintiffs produce them. Plaintiffs add that Patricia
 19 Lopez’s deposition contained detailed information about (1) the frequency of Decedent’s
 20 seizures, (2) symptoms witnessed, (3) his prescription medication, and (4) the name of his
 21 treating neurologist.

22 Because (1) Plaintiffs disclosed Decedent had a seizure disorder in their MIDP
 23 response (Doc. 114-1), (2) Defendants did not subpoena medical records, and (3) Plaintiffs
 24 did not have access to Decedent’s medical records, the Court finds Plaintiffs’ alleged
 25 withholding of Decedent’s epilepsy records did not violate their MIDP duties.

26 2. Decedent’s Facebook Page

27 Defendants argue Decedent’s Facebook page, which included posts about his
 28 alcohol, drug use, and involvement with the criminal justice system, was withheld by

1 Plaintiffs in violation of their MIDP duties to provide relevant ESI and information
2 pertinent to Plaintiffs' claimed damages. Defendants argue Patricia Lopez had access to
3 Decedent's Facebook page given posts she made on July 26 2018, August 15, 2018, July
4 10, 2018, and July 21, 2019.

5 Plaintiffs respond that Patricia Lopez made her last post on Decedent's Facebook
6 page on July 21, 2019 and did not have access to Decedent's Facebook page when Plaintiffs
7 served discovery responses in March and April of 2020. Moreover, Plaintiffs argue
8 Decedent's criminal history and drug and alcohol use is irrelevant to Plaintiffs' wrongful
9 death damages and Decedent's loss of enjoyment damages.

10 The Court finds Plaintiffs failed to comply with their ESI obligations by not
11 providing information about Decedent's Facebook page. However, the Court finds
12 Defendants were not substantially prejudiced by this failure given pertinent information on
13 the Facebook page is now in their possession and only tangentially relates to claimed
14 damages. The Court finds nondisclosure of Decedent's Facebook page does not warrant
15 sanctions.

16 3. Memorial Website

17 Defendants also claim Plaintiffs did not disclose Decedent's memorial website,
18 containing Decedent's obituary, photos, comments from friends, family, and a video.
19 Plaintiffs respond they did not manage nor maintain the memorial website.

20 Defendants have not established any reason the memorial website is relevant to the
21 Plaintiffs' MIDP obligations or any substantial prejudice resulting from nondisclosure. The
22 Court finds nondisclosure of the memorial website did not violate Plaintiffs' MIDP duties.

23 4. Computation of Damages

24 Defendants contend Plaintiffs did not provide sufficient computation of damages or
25 documents supporting their computation as required under MIDP. Plaintiffs have provided
26 their MIDP response, state they already advised Defendants in their initial tort claim they
27 seek damages in excess of \$3.5 million, and argue no specific guideposts exist to quantify
28 wrongful death factors.

1 In their MIDP responses, Plaintiffs stated:

2
3 Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(iii), Plaintiffs disclose that they are
4 entitled to recover damages in the form of, inter alia, actual damages, mental
5 anguish and humiliation, emotional distress, punitive damages, attorneys'
6 fees, costs, and interest. The loss of a life is difficult to quantify. The
7 following will be used in the calculation of Plaintiffs' damages:

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1. The nature, extent, and duration of the injury;
 2. The pain, discomfort, suffering, emotional and mental distress, anxiety already experienced and reasonably probable to be experienced in the future as a result of the injury;
 3. Reasonable expenses of necessary funeral and burial expenses incurred by the Plaintiffs and any medical bills relating to medical treatment rendered to the decedent as a result of this incident;
 4. Lost earnings to date, and any decrease in earning power or capacity in the future;¹
 5. Loss of love, care, affection, companionship, and other pleasures of the parent-child relationship, including support, guidance, and financial assistance; and
 6. Loss of enjoyment of life
- 17
- 18

(Doc. 122-2 Ex. 7).

19 The Court finds Plaintiffs' responses were sufficient to meet their MIDP
20 computation requirements.

21 C. Alleged Inaccurate and Incomplete Discovery Responses

22 The Court considers Defendants' allegations regarding Plaintiffs' discovery
23 responses.

24 1. Request for Production No. 2: Photographs and Video

25 Defendant's Request for Production ("RFP") No. 2 asked Plaintiffs to produce "all
26 photographs or video of Anthony Lopez taken from August 1, 2015 to the present." (Doc.
27 122 Ex. 8 at 4). Plaintiffs objected to the request as overly broad, unduly burdensome,
28 vague and ambiguous, potentially irrelevant, an invasion of privacy, and "a fishing
expedition." While preserving these objections, Plaintiffs provided several photos to

¹ Plaintiffs have since withdrawn their claim for economic damages.

1 Defendants. Following these discovery responses, Patricia Lopez stated in her August 17,
 2 2020 deposition that she possessed Decedent's phone. (Doc. 122-2 Ex. 1 at 46:13-14).

3 Defendants argue Plaintiffs' productions were incomplete because they omit photos
 4 Patricia Lopez had access to on the Decedent's Facebook page and Decedent's phone.
 5 Plaintiffs respond that Patricia Lopez produced photographs of Decedent in her actual
 6 possession, on her phone, or physical print photographs.

7 Given Plaintiffs informed Defendants they had objections, Defendants' knowledge
 8 of Decedent's phone, and failure to meet and confer to request further photos in the
 9 discovery period and seek relief from the Court, the Court finds Plaintiffs did not violate
 10 their discovery obligations. However, the Court will order Plaintiffs to provide Decedent's
 11 phone to Defendants if they have not already done so.

12 2. Request for Production No. 4: Communications To/From Decedent

13 Defendants' RFP No. 4 states: "Please produce all documents, correspondence,
 14 emails, text messages, and other communications to and/or from Anthony Lopez." (Doc.
 15 122-2 Ex. 8 at 4). Plaintiffs objected to the request as overly broad, unduly burdensome,
 16 an invasion of privacy, and seeking potentially irrelevant documents. Plaintiffs further
 17 responded they were unable to produce Patricia Lopez's messages on her previous phone.
 18 Following these discovery responses, Patricia Lopez stated in her August 17, 2020
 19 deposition that she possessed Decedent's phone. (Doc. 122-2 Ex. 1 at 46:13-14).

20 Defendants argue Patricia Lopez should have searched Decedent's cell phone for
 21 messages. Plaintiffs respond that Defendant City of Mesa could have searched Decedent's
 22 cell phone when it was in their possession for several weeks after the shooting. In
 23 Defendants' reply, they contend Defendants did not have a legal right to search the cell
 24 phone when it was in their possession and did not have notice of Plaintiffs' intent to sue
 25 when it returned the phone to Plaintiffs. Defendants add that Plaintiffs had an independent
 26 legal obligation to search the cell phone when it was returned to them.

27 Given Plaintiffs' stated discovery objections and knowledge that Defendants
 28 previously held Decedent's phone, the Court finds Plaintiffs were not negligent in failing

1 to provide Decedent's phone to Defendants. Additionally, Plaintiffs' omission was
 2 substantially harmless given Defendants' awareness of Decedent's phone and failure to
 3 meet and confer to request the phone or seek relief from the Court to search the phone
 4 during the discovery period. The Court will order Plaintiffs provide the phone to
 5 Defendants if they have not done so, but will award no further sanction on this allegation.

6 3. Interrogatory No. 2: The Decedent's Activities

7 Interrogatory No. 2 states: "Give a detailed account of your knowledge and
 8 understanding of [Decedent's] activities during the 48-hour period immediately preceding
 9 his death, including all communication you had with [Decedent] during that time period
 10 and his use of any alcohol, drugs, or medications." (Doc. 122-2 Ex. 5 at 2). Plaintiffs
 11 objected to the request on the grounds of privacy, information protected by the Health
 12 Insurance Portability and Accountability Act of 1996, physician-patient privilege and/or
 13 psychotherapist-patient privilege, overly broad and unduly burdensome, and not
 14 reasonably calculated to lead to discovery of admissible evidence. While preserving these
 15 objections, Plaintiff Patricia Lopez provided,

16 On July 19, 2018, Anthony Lopez went to Raceway Car Wash to follow up on a
 17 job application he had submitted. Anthony Lopez also went to buy groceries for
 18 Plaintiff Patricia Lopez with a friend, and his friend drove. On July 20, 2018
 19 Anthony Lopez walked to the Circle K on Broadway & Dobson to buy some
 20 snacks. Anthony Lopez stayed home during the day on that date and played video
 21 games in his room. Patricia Lopez told him goodnight and that she loved him. That
 22 was the last time that Patricia Lopez saw Anthony Lopez alive.

23 *(Id.).*

24 Defendants contend Plaintiff Patricia Lopez made several notable omissions
 25 answering this interrogatory. First, Defendants argue the answer omits Decedent's visit to
 26 a marijuana dispensary at 3:13 PM using Patricia Lopez's vehicle, which Decedent was
 27 driving at the time of the shooting. Defendants opine because Patricia Lopez's testimony
 28 stated Decedent did not have a driver's license and had never driven her vehicle prior to
 the shooting, Patricia Lopez either took Decedent to the dispensary herself or Decedent

1 took her vehicle without her knowledge in the middle of the day. Second, Defendants argue
2 Plaintiffs omitted information that Decedent was looking to play pool on the night of his
3 death, which could help identify individuals who were with Decedent on the night of his
4 death who potentially observed him drinking.

5 Plaintiffs respond Patricia Lopez had no reason to know Decedent's visit to the
6 dispensary because her car was impounded after Decedent's death, giving her no
7 opportunity to view the dispensary receipt. Plaintiffs also argue Patricia Lopez gave a
8 recorded interview to the Mesa Police Department on July 21, 2018, when her memory of
9 events was better than her deposition and discovery responses. In this interview, Patricia
10 Lopez stated Decedent went to play pool on the night of the shooting and returned home
11 that night before she went to bed. Plaintiffs additionally contend Decedent's visit to play
12 pool was irrelevant to his death and Defendants already have necessary information about
13 Decedent's alcohol consumption from his toxicology report at the time of the shooting.

14 The Court finds Patricia Lopez's answer was incomplete in omitting Decedent's
15 visit to play pool, but Defendants have shown no substantial prejudice given all omitted
16 information to this interrogatory was already testified by Patricia Lopez, unknown to
17 Patricia Lopez, or already known by Defendants. The Court will award no sanction on this
18 allegation.

19 4. Interrogatory No. 5 and Request for Production No. 5 Decedent's Social Media
20 Defendants' Interrogatory No. 5 states: "Identify any and all social media accounts
21 including, but not limited to, blog entries, web pages, Twitter, Facebook, Instagram,
22 Google+ and/or My Space, that you and/or [Decedent] owned, created or participated in
23 from July 2014 to the present date, including each user ID and password necessary to access
24 each, and whether such content still exists or has been deleted since its submission." (Doc.
25 122 Ex. 5 at 6-7). Plaintiffs objected to the interrogatory as overly broad and burdensome,
26 seeking inadmissible evidence, and a fishing expedition. Without waiving objections,
27 Plaintiff Patricia Lopez responded:

28 Plaintiff believes that [Decedent] may have had a Facebook account, which may or
may not still exist. Plaintiff does not have the user ID or password to her son's

1 account. Plaintiff Patricia Lopez maintains a Facebook account. On the basis of the
2 foregoing objections, Plaintiff will not produce her password to her account.

3 (*Id.*).

4 Defendants' Request for Production No. 5 states,

5 Please produce a copy of all notes, messages, correspondence, voicemails, diaries,
6 logs, journals, diagrams, renderings, emails, text messages, social media
7 (including, but not limited to, Facebook, Twitter, Instagram, and Pinterest)
8 correspondence, posts, messages, photographs and video, created before, during,
9 or after the incident that relates in any way to: the incident, the incident scene,
10 your injuries, facts related to the incident, responders to the incident scene,
11 witnesses, parties, any description of or reference to the incident alleged in the
12 complaint, and any injuries referenced in your Complaint, Mandatory Initial
13 Discovery Responses, or disclosure statements

14 (Doc. 122-2 Ex. 8 at 5). Plaintiffs objected to the request as overly broad, unduly
15 burdensome, vague and ambiguous, and an invasion of privacy. Without waiving
16 objections, Plaintiffs responded, "After a diligent search and reasonable inquiry, Plaintiffs
17 are unable to locate any documents responsive to this Request that have not already been
18 produced pursuant to Plaintiffs' initial disclosures. Plaintiffs reserve their right to amend
19 or supplement this response." (*Id.*).

20 Defendants argue Plaintiffs failed to produce Decedent's Facebook page, memorial
21 website, or Snapchat account. Plaintiffs respond Ms. Lopez made her last post on
22 Decedent's Facebook page on July 21, 2019 and did not have access to Decedent's
23 Facebook when she served discovery responses in March and April of 2020. Plaintiffs add
24 they had no knowledge of Decedent's Snapchat account and did not communicate with
25 Decedent on Snapchat. Lastly, Plaintiffs again argue they did not manage or maintain
26 Decedent's memorial website.

27 The Court finds Plaintiffs did fail, but were not reckless in failing to provide the
28 Facebook and Decedent's memorial page pursuant to these requests. And, given Plaintiffs'
stated objections, Defendants' failure to timely meet and confer in the discovery period,
and Defendants' current access to this information, the Court also finds Plaintiffs'
responses were substantially harmless. The Court will award no sanction on this allegation.

1 5. Request for Admission No. 4: Felony Probation

2 Defendants' Request for Admission No. 4 asked Plaintiffs to "admit that Decedent
 3 knew on July 21, 2018, that he was on felony probation pursuant to a plea agreement for a
 4 prior crime." (Doc. 122 Ex. 10 at 2). Plaintiffs objected to the Request as being compound
 5 and calling for speculation, but responded "Deny subject to the foregoing objections." (*Id.*).

6 Defendants argue Plaintiffs should have admitted this request because Decedent
 7 posted on his Facebook page 30 days before his death that he was going to see his "P.O."
 8 (Doc. 122-2 Ex. 1 at 2) and a receipt for TASC urine drug testing has been produced, which
 9 is a court ordered process and part of probation. (Doc. 122-2 Ex. 9). Plaintiffs respond that
 10 the question was compound in asking what Decedent knew, whether the probation was
 11 felony probation, whether the probation was the result of a plea agreement, and whether
 12 Decedent was still on probation at the time of his death. Plaintiffs add Defendant City of
 13 Mesa has information regarding Decedent's probation and Plaintiff Patricia Lopez has
 14 testified about Decedent's felony conviction, her lack of awareness as to the terms, charges
 15 or any paperwork regarding Decedent's probation, and stated she drove Decedent to the
 16 Probation Department multiple times.

17 Given Defendants' present knowledge of Decedent's felony probation and
 18 Defendants' failure to meet and confer to amend responses in the discovery period and seek
 19 relief from the Court, the Court finds Plaintiffs did not violate their discovery obligations
 20 on this allegation.

21 D. False Deposition Testimony

22 Defendants have argued Plaintiff Patricia Lopez gave false deposition testimony
 23 when asked about the photographs she possessed in the following excerpt:

24
 25 Ms. Alvarado: In terms of when I looked through the photos, most of them seemed
 26 to be from when Anthony was a baby, a toddler, a young kid playing baseball. ***Did you have any photos of him from the last two years of his life?***

27 Plaintiff: He did not like to take pictures.

28 Ms. Alvarado: Okay. So the answer is, no, you don't---

A: **No—**

Q: Have any? Okay. Have you ever checked his phone to see if there's any

1 photos of him on that phone?

2 A: No.

3 Q: So, to your knowledge, is that photograph of you and Anthony at the beach
the most recent photograph you have of him prior to his death?

4 A: I have a couple that were given to me by friends.

5 Q: How—what was Anthony doing in those photos?

6 A: They are just selfies.

7 (Doc. 122 Ex. 2 at 65).

8 Defendants argue Patricia Lopez gave misleading responses in her testimony given
her direct access to Decedent's photographs on Facebook and the public memorial website.
9 Plaintiffs respond that Patricia Lopez produced photographs she had in her possession on
10 her phone, did not have access to the Facebook page at the time of her deposition, and did
11 not create or maintain the memorial website. Thus, Plaintiffs did not violate discovery
12 requirements.

13 The Court finds Patricia Lopez's deposition responses were not intentionally
14 incomplete, inaccurate, or misleading.

15 **E. Preclusion of Consortium Damages and State Law Claims**

16 Defendants also argue Plaintiffs should not be able to collect post-death hedonic
damages under U.S. Supreme Court precedent and Plaintiffs' state law claim fails under
17 Arizona Law. Plaintiffs respond that survival damages are recoverable and Defendants'
18 state law objections are an attempt to bring a second motion for summary judgement. The
19 Court agrees, and will deny these requests without prejudice assuming it has relevance
20 before trial.

21 **F. Conclusion**

22 The Court finds Plaintiffs have not committed sanctionable conduct in their
discovery responses under Rule 37. However, the Court will order Plaintiffs to provide
23 Defendants with the phone of Decedent Anthony Lopez within 10 days of the entry of this
24 order.

25 Accordingly,

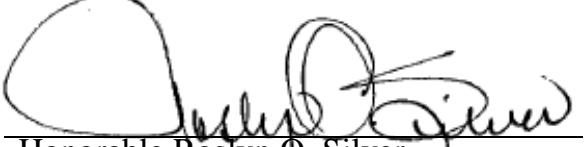
26 **IT IS ORDERED** Defendants' Motion for Rule 37 Sanctions (Doc. 122) is

1 **GRANTED IN PART and DENIED IN PART**

2 **IT IS FURTHER ORDERED** Plaintiffs are to provide Defendants within 10 days
3 the phone of Decedent Anthony Lopez if they have not already done so.

4 **IT IS FURTHER ORDERED** the parties should be advised that the trial date of
5 February 25, 2025 and other pretrial dates set forth in the September 17, 2024 order (Doc.
6 115) are firm.

7 Dated this 13th day of November, 2024.

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11 Honorable Roslyn O. Silver
12 Senior United States District Judge

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